IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 298 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTILAL DHANJIBHAI KARIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 298 of 2001

MR MJ BUDDHBHATTI for Petitioner No. 1

MR HH PATEL, A.P.P. for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2-3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/08/2001

ORAL JUDGEMENT

1. With consent of Shri M.J.Budhbhatti, learned Counsel for the Revisionist, Shri H.H. Patel, learned A.P.P. for Respondent No.1 and Shri Y.S.Lakhani, learned

Counsel for the respondents No.2 & 3 this Revision is proposed to be disposed of finally at the admission stage.

2. The order dated 28.6.2001 of Additional Sessions Judge, Morbi is under challenge. The Revision arise out of the following facts :

One witness Rajesh who was a witness of Inquest Memo and preparation of sketch plan for the scene of occurrence was examined and cross-examined. During cross examination certain questions were asked which are contained in Paras : 8 & 9 of his deposition. Objection was raised by the learned APP that these questions cannot be asked inasmuch as the witness was to prove only Inquest Memo Ex.21 & 22 and he was not a witness or eye witness of fact. This objection was overruled by the Court below. Request was also made that if such questions are permitted, the A.P.P. may be permitted to get the witness declared hostile and further permission be granted for his cross examination. That request was also turned down. Hence this revision.

3. A witness who was summoned by the prosecution to prove Inquest Memo and sketch plan of the scene of occurrence was a formal witness and not an ocular witness. If he would have been ocular witness he could not have been selected as Panch to the Inquest Memo. Consequently he could not have stated anything regarding factual aspect of the prosecution story and also on the questions put to him in cross examination which are recorded in Paras : 8 and 9 of his cross examination. On such facts the learned A.P.P. was justified in requesting the Court below to declare the witness hostile and was further justified in seeking permission of the Court for his cross examination. Since permission was not granted the Revision has to be allowed and is hereby allowed. The questions and answers which have come in Paras : 8 & 9 of the deposition of witness Rajesh shall not be read in evidence as statement of this witness during cross examination. It is, however, left open to the accused respondents No.2 & 3 to select and decide at an appropriate stage after their statement u/s.313 Cr.P.C. is recorded to seek permission of the Court to summon Rajesh as defence witness and if such permission is sought the trial Court shall hear the request and decide the same in accordance with law.

sd/-

Date : August 13, 2001 (D. C. Srivastava, J.)

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